

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

DIVISION III

FILED

OCT 10 2008

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
3v. 162



82957-8

STATE OF WASHINGTON

Respondent,

v.

DANIEL ALFRED POSEY, JR,

Petitioner

Appeal No. 26771-7-III

STATE'S MOTION  
ON THE MERITS

**1. Identity of Moving Party**

COMES NOW the respondent, State of Washington, by and through Kenneth L. Ramm, deputy prosecuting attorney for Yakima County.

**2. Statement of Relief Sought**

The State asks the court to affirm the conviction and sentence as to the merits pursuant to RAP 17.1(b) and RAP 18.14.

### **3. Facts Relevant to Motion**

The defendant, Daniel Alfred Posey, Jr., was tried in adult court on amended charges of first degree assault, count 1; and second degree rape, counts 2-4. [CP 79-82]. Although the defendant was 16 years of age at the time of the offense, the charge of First Degree Assault resulted in Superior Court jurisdiction under RCW 13.04.030.

A jury found Mr. Posey guilty of two counts of second degree rape, but found him not guilty of first degree assault and one count of second degree rape. [CP 70-78]. Mr. Posey was sentenced in adult Superior Court to a sentence of life, with a minimum term of 119 months of confinement. [CP 62-29].

Mr. Posey appealed the conviction and sentence. The Court of Appeals affirmed the conviction and sentence. [See *State v. Posey*, 130 Wn. App. 262, 122 P.3d 914 (2005)]. Mr. Posey sought review of that decision. The Supreme Court accepted review. Following oral argument the Court reversed the Court of Appeals decision regarding the adult sentence, and remanded the case back to in order for the defendant to be sentenced as a juvenile. [CP 17-43]. The Supreme Court filed its opinion on September 20, 2007. [CP 19]. However, before the mandate was issued on October 16, 2007, Mr. Posey turned 21 years of age. [CP 13-15, 17].

A hearing was held on January 9, 2008 in Juvenile Court. [ 01-09-2008 RP 2-3, 4]. The defendant moved the court to dismiss his case arguing that since the Supreme Court ordered that he be sentenced by Juvenile Court as a juvenile, the Superior Court did not have jurisdiction over him. And that by virtue of his current age of 21, juvenile court lost jurisdiction. [CP 13-15, 16; 01-09-2008 RP 6-16, 47]. The judge agreed that the Juvenile Court no longer had jurisdiction over the case in light of his age. [ 01-09-2008 RP 28]. The trial court held that it would be a miscarriage of justice if it were to simply dismiss the case when the Supreme Court had affirmed the convictions simply because the Juvenile Court lacked jurisdiction due to the defendant's age. [ 01-09-2008 RP 29].

The court sentenced Mr. Posey to the standard range sentence that he would have received as a juvenile, 60-80 weeks, and gave him credit for time served. [01-09-2008 RP 30-31]. The court also entered a Protection Order and a Sex Offender Notice of Registration Requirements. [CP 7-8, 12; 01-09-2008 RP 44-45].

#### **4. Argument and Conclusion**

- A. WHEN THE JUVENILE COURT LACKS JURISDICTION OVER A PERSON DUE TO HIS OR HER AGE, THE SUPERIOR COURT THEN HAS JURISDICTION IN ITS ABSENCE.

The pertinent statute is RCW 13.30.300(3), which provides, in relevant part:

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

The Supreme Court held in *State v. Dion*, 160 Wn.2d 605, 159 P.3d 404 (2007)

Juvenile court jurisdiction terminates when the defendant turns 18, unless the court lawfully extends jurisdiction before the juvenile's 18th birthday. *State v. Calderon*, 102 Wn.2d 348, 349, 684 P.2d 1293 (1984).

The statutory provision at issue here provides that the juvenile court may extend jurisdiction by written order only if prior to the juvenile's 18th birthday "[p]roceedings are pending seeking the adjudication of a juvenile offense." RCW 13.40.300(1)(a). Thus, we must determine whether proceedings were pending seeking the adjudication of a juvenile offense when the juvenile court judge extended juvenile jurisdiction beyond Dion's 18th birthday.

*Dion*, 160 Wn.2d at 605.

In *State v. Nicholson*, 84 Wn. App. 75, 77-78, (1996), the court found that:

"Juvenile court jurisdiction is strictly construed. *State v. Rosenbaum*, 56 Wn. App. 407, 410, 784 P.2d 166 (1989). Such jurisdiction ends when a juvenile turns 18, unless the juvenile court extends its jurisdiction before that day. *State v. Calderon*, 102 Wn. 2d 348, 352, 684 P.2d 1293 (1984). "Even if a juvenile cause were pending and not yet heard on the merits prior to the juvenile's 18th birthday, the juvenile court loses jurisdiction." *State v. Bushnell*, 38

Wn. App. 809, 811, 690 P.2d 601 (1984). To extend jurisdiction, the court must comply with the requirements of RCW 13.40.300. Under this statute, a juvenile [\*78] can be retained under the jurisdiction of the juvenile court beyond his or her 18th birthday only if before the juvenile's 18th birthday: (a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday . . . RCW 13.40.300(1)(a) (emphasis added). Once juvenile court jurisdiction has lapsed, the court can not enter a written order extending jurisdiction, even with the consent of both parties. See *Rosenbaum*, 56 Wn. App. at 411-12. Two conditions are necessary, therefore, to extend juvenile jurisdiction: (1) proceedings pending seeking the adjudication of a juvenile offense; and (2) the entry of a written order. RCW 13.40.300(1)(a).

In *State v. Meridieth*, 144 Wn. App. 47, 49, 180 P.3d 867 (2008), the court applied the ruling in *In re PRP of Dalluge*, 152 Wn.2d 772, 775, 100 P.3d 279 (2004), and remanded the case to adult superior court because Meridieth was over the age of 18, for a *Dillenburg de novo* hearing on whether declination would have been appropriate. *In re Habeas Corpus of Dillenburg*, 70 Wn.2d 331, 355, 422 P.2d 783 (1967).


Unlike the facts in *Meridieth*, where the adult superior court was without jurisdiction to try the defendant, the superior court jurisdiction to try the defendant is not disputed. In this case the adult superior court had jurisdiction since the juvenile court lost jurisdiction when the defendant turned 21. The defendant had been properly tried as an adult. He appealed the conviction and sentence. He was given all the due process protections of adult court, including trial by jury. The delay in

resentencing was not the result of any action by the State to frustrate the jurisdiction of juvenile court. As stated by the court in *State v. Cirkovich*, 41 Wn. App. 275, 279, 703 P.2d 1075 (1985), "[t]o permit the offender to entirely avoid his punishment merely by invoking the appellate process and obtaining a stay of execution of sentence would permit a result contrary to the express purposes of the Act and not intended by the Legislature."

Additionally, in *State v. Bradley*, 20 Wn. App. 222, 224, 580 P.2d 640 (1978), the court stated "[t]he issue then is the effect of this fact on the acts of Bradley which resulted in the original juvenile court order. Bradley could not be treated as a juvenile following his 18th birthday but this fact does not deprive the superior court of jurisdiction over his person. *State v. Brewster*, 75 Wn.2d 137, 449 P.2d 685 (1969); *State v. Setala*, 13 Wn. App. 604, 536 P.2d 176 (1975). Whether he could be tried as an adult raises questions of double jeopardy and speedy trial. Want of jurisdiction of the juvenile court merely precludes acts of that court. It does not invalidate an otherwise valid act of the superior court which properly had jurisdiction of the subject matter and the person."

Since the juvenile court lost jurisdiction, to no fault of the State, and since he was properly tried in adult superior court, the judgment and sentence should be affirmed.

Respectfully submitted this 9<sup>th</sup> day of October, 2008.

  
Kenneth L. Ramm, WSBA 16500  
Deputy Prosecuting Attorney  
Attorney for Yakima County

Certificate of Service

I, Kenneth L. Ramm, hereby certify that on this date I served copies of the foregoing by depositing the same in the US Mail, first class postage prepaid, and addressed to:

Stephanie C. Cunningham  
Attorney at Law  
4616 25<sup>th</sup> Avenue NE, No. 552  
Seattle, WA 98105

Daniel A. Posey, Jr.  
12387 SE Lynwood Ave., Apt. H-11  
Milwaukie, OR 97222

Dated at Yakima WA this 9<sup>th</sup> day of October, 2008.

  
Kenneth L. Ramm, WSBA 16500